

IN THE HIGH COURT OF GUJARAT
AHMEDABAD

CIVIL REVISION APPLICATION NO.2263 OF 1995

Date of Decision: 18th January 1996

For Approval and Signature:

Hon'ble Mr. Justice : S.D. SHAH

1. Whether Reporters of Local Papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a s..

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question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

Mr. B.N. Keshwani, Advocate for petitioner
Mr. P.K. Shukla, Advocate for respondent No.1

Coram: S.D. SHAH, J.

Date : 18th January, 1996

ORAL JUDGMENT:

1. RULE. Mr. P.K. Shukla appears for respondent No.1 and waives service of rule. The respondent No.2 is the owner of the vehicle insured and his presence is not required for the purpose of deciding this Civil Revision

Application. With the consent of the learned Advocates appearing for the parties, the matter is finally heard today.

2. It appears that the respondent No.1 instituted Motor Accident Claim Petition No. 8 of 1995 before the Motor Accident Claim Tribunal for injuries received by her on vehicular accident that took place on 26th of July, 1994 around 9.45 in the morning on the road leading to Vasana towards Jivraj Mehta Hospital. In such petition, she filed an application at Exhibit 20 for interim compensation under Section 140 of the Motor Vehicles Act, 1988 based on the principle of no fault liability. It appears that the accident has taken place on 26th of July, 1994. Section 140 of the Motor Vehicles Act, 1988, as it stood on that date, provided that interim compensation payable under Section 140 is in case of permanent/partial disability without establishing any fault, would be Rs. 12,000/-. However, by Act No. 54 of 1994, which has admittedly come into force on 14th of November, 1994, Section 140 is amended so as to provide that in cases of permanent/partial disability, the claimant shall be entitled to get interim compensation of Rs. 25,000/- irrespective of establishment of any fault. The Tribunal has by the impugned judgment and order dated 7th of August, 1995, directed the owner of the vehicle as well as the company to deposit Rs. 25,000/- which is under challenge before this Court. Mr. B.N. Keshwani, learned Counsel appearing for the petitioner has submitted before the Court that on the date of the accident i.e. 26th July, 1994, Section 140 of the Act of 1988 only provided for interim compensation of Rs. 12,000/- to person who has received permanent/partial disability. The claimant could have therefore under the Act, as it stood then, claimed only amount of interim compensation being Rs. 12,000/-. In his submission, the Tribunal exceeded its jurisdiction or erred in applying the provision of amended Act, which came into force after the accident took place i.e. on 14th November, 1994.

3. This Court has in the case of GUJARAT STATE ROAD TRANSPORT CORPORATION v. DECEASED KASIBEN reported in 1993 (2) GLH (UJ) 6, taken the view that when accident in question has taken place before the amendment of the Act came into force, the provision of the old Act would apply. The amending Act, which has come into force from November, 1994 has however not provided that such amendment shall have retrospective effect or shall apply irrespective of the date of accident. The relevant date being the date of accident, the entitlement of a person to receive interim compensation shall have to be decided

by reference to the date of accident. If, on the date of the accident, Section 140 of the Act of 1988 made provision for interim compensation of Rs. 12,000/- only, the Tribunal could not have awarded the amount of Rs. 25,000/-. In view of the aforesaid settled legal position and in view of the fact that the amending Act has not been given retrospective effect, the judgment and order of the Tribunal shall have to be modified so as to direct the present applicant and the owner of the vehicle to pay Rs. 12,000/- to the claimant with running interest at the rate of 12 per cent per annum from the date of filing of the petition till realisation. The judgment and order of the Tribunal below Exhibit 20 in Motor Accident Claim Petition No. 8 of 1995 is accordingly modified. Civil Revision Application is allowed to the aforesaid extent only. Rule is partially made absolute. No costs.
